

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF	)	
RULES AND PROCEDURES TO IMPLEMENT	)	
THE RENEWABLE ENERGY PORTFOLIO	)	
STANDARDS ACT, 26 DEL. C. §§351-363,	)	
AS APPLIED TO RETAIL ELECTRICITY	)	PSC REGULATION DOCKET NO.
56		
SUPPLIERS (OPENED AUGUST 23, 2005);	)	
REOPENED SEPTEMBER 4, 2007; AUGUST 5,	)	
2008; SEPTEMBER 22, 2009; AUGUST 17,	)	
2010; SEPTEMBER 6, 2011; SEPTEMBER 18,	)	
2012; FEBRUARY 2, 2017)	)	

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ORDER NO. 9197

AND NOW, this 24<sup>th</sup> day of April, 2018, the Delaware Public Service Commission (the "Commission") determines and orders as follows:

WHEREAS, on October 2, 2015, the Delaware Division of the Public Advocate ("DPA") filed a Petition (the "Petition") requesting the Commission to open a docket to consider whether to amend 26 Del. Admin. C. §3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 Del. C. §§354(i) and (j) of the Renewable Portfolio Standards Act ("REPSA"); and

WHEREAS, the Caesar Rodney Institute ("CRI") submitted a petition supporting the DPA's Petition, and the Commission Staff and the Delaware Department of Natural Resources and Environmental Control submitted a Joint Motion opposing the Petition; and

WHEREAS, on November 3, 2015, the Commission rejected the DPA's Petition in Order No. 8807; and

PSC Regulation Docket No. 56, Order No. 9197 Cont'd

**WHEREAS**, the DPA appealed Order No. 8807 to the Delaware Superior Court, which issued a Memorandum Opinion and Order reversing the Commission's decision in Order No. 8807 and remanding the matter to the Commission for proceedings consistent with the Memorandum Opinion and Order;<sup>1</sup> and

**WHEREAS**, in Order No. 9024 dated February 2, 2017, the Commission: (1) reopened Regulation Docket No. 56 to comply with the Court's Memorandum Opinion and Order; (2) ordered publication of proposed regulations to implement 26 Del. C. §§354(i) and (j) in the March 2017 issue of the Register of Regulations; and (3) scheduled a public hearing on the proposed regulations on April 6, 2017; and

**WHEREAS**, the Commission received 104 written public comments from several commenters, including the DPA, DNREC, CRI; Gary Myers, and state legislators; and

**WHEREAS**, the Commission heard oral argument from certain commenters and considered the written comments and the oral argument in public deliberations, after which it made substantive changes to the published regulations, thus requiring republication of the proposed regulations pursuant to the Administrative Procedures Act; and

**WHEREAS**, in Order No. 9090 dated July 25, 2017, the Commission ordered publication of the proposed revised regulations in the September 2017 Register of Regulations, with a comment deadline of October 2, 2017; and

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<sup>1</sup> *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, 2016 WL 7494899 (Del. Super. Ct. Dec. 30, 2016).

PSC Regulation Docket No. 56, Order No. 9197 Cont'd

**WHEREAS**, the Commission received eight timely written comments, including the DPA, DNREC, CRI, and Gary Myers, and received 24 written comments after the deadline on the revised proposed regulations; and

**WHEREAS**, the Commission published notice of a public hearing on December 7, 2017, at which it would hear public comment and deliberate on the proposed revised regulations; and

**WHEREAS**, the Commission heard oral argument and considered the written comments received, and voted on the issues raised by the proposed revised regulations and the written comments received thereon; and

**WHEREAS**, in Order No. 9016 dated January 16, 2018, the Commission ordered republication of the proposed regulations as revised by its determinations at the December 7, 2017 public hearing (the "Revised Proposed Regulations"), which republication occurred in the February 2018 Register of Regulations, and which established another new comment period; and

**WHEREAS**, the Commission received written comments from the DPA, DNREC, CRI, Gary Myers, DNREC Secretary Shawn M. Garvin, and 128 other members of the public; and

**WHEREAS**, the Commission held a duly-noticed public hearing on March 27, 2018;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO**

**FEWER THAN THREE COMMISSIONERS:**

1. That the Commission, *sua sponte*, and pursuant to its reservation of jurisdiction and authority to enter such further orders as may be deemed necessary and proper, will hear further oral argument

PSC Regulation Docket No. 56, Order No. 9197 Cont'd

on all of the issues raised by the Revised Proposed Regulations at its regularly-scheduled June 5, 2018 meeting.

2. The Commission Staff shall publish notice of this meeting so as to provide 20 days' notice thereof pursuant to 29 *Del. C.* §10115(b).

3. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary